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14 **UNITED STATES DISTRICT COURT**
 15 **NORTHERN DISTRICT OF CALIFORNIA**
 16 **SAN FRANCISCO DIVISION**

17 GEORGE BETAK, an individual,

 18 Plaintiff,

 19 v.
 20 VALERY MIFTAKHOV, an individual;
 ELECTRIC MOTOR WERKS, INC., a
 21 Delaware corporation; and ENEL X NORTH
 AMERICA, a Delaware corporation,
 22 Defendants.

CASE NO.: 3:19-cv-02516-JSC

**(A) ELECTRIC MOTOR WERKS, INC. AND
 ENEL X NORTH AMERICA'S NOTICE OF
 MOTION AND MOTION TO DISMISS
 PLAINTIFF'S COMPLAINT;
 MEMORANDUM OF POINTS AND
 AUTHORITIES IN SUPPORT THEREOF;**

(B) REQUEST FOR JUDICIAL NOTICE;

**(C) DECLARATION OF CHRISTOPHER B.
 MCKINLEY IN SUPPORT; and**

**(D) [PROPOSED] ORDERS GRANTING (a)
 MOTION TO DISMISS AND (b) REQUEST
 FOR JUDICIAL NOTICE.**

Date: September 5, 2019

Time: 9:00 a.m.

Judge: Hon. Jacqueline Scott Corley

Complaint Filed: May 9, 2019

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NOTICE OF MOTION**TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

PLEASE TAKE NOTICE that on September 5, 2019, at 9:00 a.m. or as soon thereafter as the matter may be heard by the United States District Court for the Northern District of California, located at the San Francisco Courthouse, Courtroom F – 15th Floor, 450 Golden Gate Avenue, San Francisco, CA 94102, before the Honorable Jacqueline Scott Corley, Defendants Electric Motor Werks, Inc. (“EMW”) and Enel X North America (“Enel X”) (collectively, the “Corporate Defendants”) will, and hereby do, move pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure and Civil Local Rule 7-2, for an order dismissing Counts I, II, and VI-VIII of Plaintiff George Betak’s Complaint against the Corporate Defendants; and Counts III-V against EMW. This motion is based on the Memorandum of Points and Authorities below, the Corporate Defendants’ Request for Judicial Notice, and the Declaration of Christopher B. McKinley in support thereof.

RELIEF REQUESTED

The Corporate Defendants respectfully request that the Court enter an order dismissing: (1) Counts I, II, and VI-VIII against the Corporate Defendants; and (2) Counts III-V against EMW.

Date: July 3, 2019

SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP

By: /s/ John M. Neukom
JOHN M. NEUKOM

Attorneys for Defendants,
ENEL X NORTH AMERICA and
ELECTRIC MOTOR WERKS, INC.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION AND STATEMENT OF ISSUES

Plaintiff George Betak’s (“Betak”) Complaint asserts several legal theories in an attempt to hold the Corporate Defendants liable for Betak’s seemingly troubled relationship with Defendant Valery Miftakhov (“Miftakhov”), but fails to state a viable claim. This failure is based principally on the Complaint’s (1) targeting of Miftakhov as the alleged bad actor, with few, if any, references to the Corporate Defendants; and (2) failure to allege facts supporting given claims.

Betak’s corrected patent inventorship claims (Counts I and II) must allege sufficient facts to allow the Court to reasonably infer—at the pleading stage—that Betak made a significant contribution to the conception of claims 1 and 11 of the U.S. Patent No. 9,987,941 (“the ’941 patent”), and claims 1 and 12 of U.S. Patent No. 10,025,277 (“the ’277 patent”).¹ But even if Betak’s alleged contributions were accepted as true, he still fails to state a plausible claim for relief because the alleged contributions are not even recited in the claims at issue. *Viz.*, Betak is alleging that he contributed certain ideas to patent claims, and yet the patent claims he identifies do not reflect the allegedly contributed ideas. Furthermore, Betak’s allegedly contributed ideas do nothing more than describe the then-current state of the art as reflected by the prior art references listed on the face of the patents at issue. Counts I and II therefore should be dismissed.

Betak’s fraud by false promise claim (Count III) should be dismissed because the Complaint fails to adequately allege that EMW participated in Miftakhov’s alleged wrongdoing under Federal Rule of Civil Procedure (“Rule”) 9(b)’s heightened pleading standard. Indeed, Betak admits he never signed an employment agreement with EMW, and that the employment offer he received to work at a different company than EMW originated from Miftakhov. Betak has not alleged facts that could support an allegation that Miftakhov acted as the agent, or in his capacity as an agent, of EMW while making this offer. Instead of alleging that EMW engaged in any specific misconduct, the Complaint merely makes broad allegations against Miftakhov and EMW collectively, while simultaneously contradicting those same general allegations in more specific

¹ Hereinafter, the cited claims are collectively referred to as “the claims at issue,” and the ’941 patent and the ’277 patent are collectively referred to as “the patents at issue.”

allegations that Miftakhov acted outside of his scope as EMW's CEO. (Compl. ¶ 31.) Moreover, because Betak is asserting a tort remedy where only economic harm has been alleged, his fraud by false promise claim is independently barred by the economic loss rule.

Betak's quasi-contract and quantum meruit claims (Count IV and V) are duplicative and should be consolidated into a single claim in the first instance. Following consolidation, the remaining claim should be dismissed because it is time-barred by the statute of limitations (based on Betak's own fact allegations), and furthermore because the Complaint fails to properly allege facts suggesting that EMW requested any services from Betak.

The Court should also dismiss Betak's unfair competition claim (Count VI) under the unlawful, unfair, and fraudulent prongs. Under the unlawful prong, to the extent Betak relies on his corrected inventorship claim, it is preempted, and Betak cannot rely on his other common law claims to satisfy the unlawful prong. Under the unfair prong, the Complaint fails to properly allege facts asserting that the Corporate Defendants violated any antitrust law, or the public policies undergirding such laws. And under the fraudulent prong, the Complaint fails to plead with particularity that the Corporate Defendants participated in Miftakhov's alleged misconduct.

Betak's constructive trust claim (Count VII) should be dismissed because a request for a constructive trust is an equitable remedy, not a claim.

Betak's accounting claim (Count VIII) should be dismissed because the Complaint fails to properly allege facts asserting that either (1) a fiduciary relationship exists; or (2) the accounts in question are so complicated they are unascertainable without an accounting.

Accordingly, the Corporate Defendants ask the Court to dismiss all claims against them.

II. BETAK'S PLEADING ALLEGATIONS

The Complaint alleges a failed business and personal relationship between two individuals: Miftakhov and Betak. The relationship allegedly soured after Miftakhov applied for, received, and assigned certain patent rights to a corporate entity, EMW, relating to electric vehicle ("EV") charging station systems—without naming Betak as a co-inventor of some patents. (Compl. ¶¶ 54-55, 69-72.) The Complaint refers specifically to three of Betak's alleged ideas that he purports contributed to the conception of the patent claims at issue: (1) having Wi-Fi-connected, software-

1 based charging stations for EVs that optimize energy usage in response to costs and available
 2 incentives (*id.* ¶¶ 24, 45); (2) using revenue-grade electric meters to measure charging-station
 3 usage (*id.* ¶ 46); and (3) allowing user-selected charging preferences to control energy distribution
 4 (*id.* ¶ 47).

5 The Complaint also alleges generally that “many if not all of the other significant
 6 inventions associated with the JuiceBox/JuiceNet project” resulted from meetings that Betak
 7 participated in, but does not specify what those inventions were or how Betak contributed to their
 8 conception. (*Id.* ¶ 49.) The Complaint also posits that these alleged contributions by Betak are in
 9 “claims 1 and 11 of the ’941 Patent” and in “claims 1 and 12 of the ’277 Patent.” (*See id.* ¶¶ 81,
 10 87.) The Complaint does not identify where in these claims such contributions are found. (*Id.*)

11 Betak’s remaining state law claims rely, in some part, on allegations that “Defendant
 12 Miftakhov approached Plaintiff Betak about collaborating on the next generation of the JuiceBox
 13 product, which would include the connectivity features that Betak had proposed.” (*Id.* ¶ 28.)
 14 Notably, the Complaint alleges that “Miftakhov proposed to [Betak] that their collaboration would
 15 be under the auspices of a new company called EV Juice, Inc. (“EV Juice”), rather than through
 16 EMW.” (*Id.* ¶ 31.) According to Betak, this was to avoid being “burdened by what Miftakhov
 17 described as ‘baggage’ related to [EMW’s] other founders and shareholders.” (*Id.*) The Complaint
 18 alleges Miftakhov presented Betak with an “Employment Offer Letter” and “Intellectual Property
 19 and Confidentiality Agreement” for EV Juice—not EMW—in September of 2014. (*Id.* ¶ 32.)

20 In his fraud by false promise claim, Betak alleges that “Defendants Miftakhov and EMW
 21 engaged in a fraudulent scheme to induce Plaintiff Betak to contribute to the JuiceBox/JuiceNet
 22 project without pay” (*Id.* ¶ 92.) The Complaint generally states that in making the alleged
 23 misrepresentations, Miftakhov acted “as the CEO of Defendant EMW,” but provides no supporting
 24 allegations. (*Id.* ¶ 93.) The Complaint does not attribute any further statements to EMW.

25 In his quasi-contract claim, Betak alleges that “Miftakhov offered that if [Betak]
 26 contributed his intellectual energy, technical expertise, and business contacts to the effort to build
 27 the JuiceBox/Juice Net product, Betak would share in the proceeds from the commercialized
 28 product, including in any sale of the business.” (*Id.* ¶ 102.) Similarly, in his quantum meruit claim,

Betak alleges that “Miftakhov, who on information and belief is and at all relevant times was the CEO of EMW, requested that [Betak] work on the JuiceBox/JuiceNet project.” (*Id.* ¶ 105.) Again, the Complaint does not attribute any further statements or representations to EMW.

The Complaint further alleges that “Miftakhov, EMW, and Enel X have engaged in unlawful, unfair, and/or fraudulent business practices.” (*Id.* ¶ 109.) These allegations rely on “Miftakhov and EMW’s failure to identify [Betak] as an inventor in filing and prosecuting various patent applications;” “Miftakhov and EMW’s false and fraudulent promises;” “Miftakhov’s, EMW’s, and Enel X’s knowing and intentional efforts to acquire and transfer to Enel X patents on which [Betak] . . . should have been named as an inventor;” “Enel X’s acquisition of patents that it knew or should have known failed to name all proper inventors;” and “Miftakhov’s, EMW’s and Enel X’s failure to pay [Betak] anything for his work on the JuiceBox/JuiceNet project.” (*Id.* ¶ 109.) The Complaint does not allege an antitrust injury or a violation of established public policy.

For the constructive trust claim, the Complaint alleges that “Defendants would be unjustly enriched, at [Betak’s] expense, if they were permitted to retain, use, and control the intellectual property, acquisition amounts, and other funds described above.” (*Id.* ¶ 114.)

Finally, the Complaint alleges that “[t]he identity, amounts, and value of the transferred assets and property [allegedly owed to Betak] are unknown to [Betak] and, on information and belief, cannot be ascertained without an accounting.” (*Id.* ¶ 117.) However, the Complaint does not allege any fiduciary relationship between the parties. Further, the Complaint alleges that Betak’s compensation under his employment offer letter would be “an initial equity grant that ‘corresponds to 3% (three percent) of the Company’s issued shares at the time of this offer’” (*id.* ¶ 33), and that EMW was acquired for approximately \$153,460,000 (*id.* ¶ 69).

III. LEGAL STANDARDS

Pleadings must include a “short and plain statement of the claim showing that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2). This standard does not require “detailed factual allegations,” but “demands more than an unadorned, the defendant-unlawfully-harmed-me accusation” or “naked assertions devoid of further factual enhancement.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (internal quotation marks omitted). To survive a motion to dismiss under

Rule 12(b)(6), a complaint must allege “sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face.” *Id.* The Court need not accept as true “[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements.” *Iqbal*, 556 U.S. at 678. “[A] plaintiff’s obligation to provide the grounds of his entitlement to relief requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (internal quotation marks omitted).

Fraud claims are subject to heightened pleading standards under Rule 9(b), requiring them to be pled with “particularity.” Fed. R. Civ. P. 9(b). To satisfy Rule 9(b), a plaintiff must plead the “who, what, when, where, and how” of the allegedly fraudulent conduct. *Kearns v. Ford Motor Co.*, 567 F.3d 1120, 1124-25 (9th Cir. 2009) (internal quotation marks omitted); *see also Swartz v. KPMG LLP*, 476 F.3d 756, 765 (9th Cir. 2007) (“[A] fraud [claim] against differently situated defendants must identify the role of each defendant in the alleged fraudulent scheme.” (alterations and internal quotation marks omitted)).

IV. ARGUMENT

A. The Complaint Fails to State a Plausible Claim for Corrected Inventorship Because Betak’s Alleged Contributions to Conception, Even If Accepted as True, Were Not Claimed and Are Insignificant

While a court may order the Director of the USPTO to correct inventorship under 35 U.S.C. § 256(a), the alleged co-inventor carries a heavy burden. “The inventors as named in an issued patent are presumed to be correct,” and thus the party alleging an error “must meet the heavy burden of proving its case by clear and convincing evidence.” *Eli Lilly & Co. v. Aradigm Corp.*, 376 F.3d 1352, 1358-59 (Fed. Cir. 2004). “[T]o survive a motion to dismiss, [an omitted inventor] must allege facts that would allow the Court to draw a ‘reasonable inference’ that [he] contributed to the conception of the claimed inventions.” *Beco Dairy Automation, Inc. v. Glob. Tech Sys., Inc.*, No. 1:12-cv-01310 LJO, SMS, 2015 WL 925588, at *5 (E.D. Cal. Mar. 3, 2015) (quoting *Iqbal*, 556 U.S. at 678).

An inventor (or joint inventor) is a person who contributes to the conception of a claimed invention. *Eli Lilly*, 376 F.3d at 1358-59. Conception, the “touchstone of inventorship,” is the “formation in the mind of the inventor, of a definite and permanent idea of the complete and

operative invention, as it is hereafter to be applied in practice.” *Ethicon, Inc. v. U.S. Surgical Corp.*, 135 F.3d 1456, 1460 (Fed. Cir. 1998) (internal quotation marks omitted). A joint inventor must have contributed to the conception of at least one claim, meaning that, at minimum, the alleged contribution must be claimed. *Sewall v. Walters*, 21 F.3d 411, 415 (Fed. Cir. 1994) (“Determining ‘inventorship’ is nothing more than determining who conceived the subject matter at issue, [and] whether that subject matter is recited in a claim.” (citation omitted)). An omitted inventor’s contribution cannot be insignificant and must constitute more than explaining well known concepts or the current state of art. *Ethicon*, 135 F.3d at 1460 (“One who simply provides the inventor with well-known principles or explains the state of the art without ever having ‘a firm and definite idea’ of the claimed combination as a whole does not qualify as a joint inventor.”).

A court in this District recently dismissed corrected inventorship claims where—like here—the claimed co-inventor’s alleged contributions were not recited in the asserted claims and were insignificant. *See Eastman v. Apple Inc.*, No. 18-cv-05929-JST, 2018 WL 5982440, at *6 (N.D. Cal. Nov. 14, 2018). In *Eastman*, the claimed co-inventor’s complaint alleged that he contributed to the conception of patents covering Apple’s find-my-iPhone and mobile-ticket-sale features. *Id.* at *5-6. But because the alleged contributions were not claimed in the language of the disputed patent claims, and because the alleged contributions merely explained what was already in the prior art, the court dismissed the corrected inventorship claims at the pleading stage. *Id.* The court held it could not “reasonably infer that an alleged contribution that simply mirrors prior art and is seemingly unrelated to the novel aspect of the invention provides a basis for a [corrected inventorship] claim.” *Id.* at *6. Other courts have held similarly. *See Ecojet, Inc. v. Pure Spa Components, Inc.*, Case No.: SACV 16-01463-CJC(KESx), 2017 WL 3485780, at *5 (C.D. Cal. Feb. 10, 2017) (dismissing corrected-inventorship claim when the complaint was “threadbare,” failing to “identify what, if anything, [the putative inventor] actually contributed to the [patented] designs, and [did] not allege that any of [his] contributions were actually claimed in the resulting patent”); *Beco Dairy*, 2015 WL 925588, at *5 (dismissing corrected inventorship counts for failing to adequately plead contribution to conception where claims at issue recited a two-ring milk meter but the omitted inventor’s alleged contribution required three rings).

1. Betak Is Not a Joint Inventor Because His Alleged Contributions to Conception Are Not Claimed

The claims at issue do not contain Betak's alleged contributions. The Complaint specifically identifies three of Betak's alleged ideas that purportedly contributed to the conception of the patent claims at issue: (1) having Wi-Fi-connected, software-based charging stations that optimize energy usage in response to costs and available incentives; (2) using revenue-grade electric meters to measure charging station usage; and (3) allowing user-selected charging preferences to control energy distribution. (Compl. ¶¶ 24, 45-47.) Betak alleges generally that these contributions are in the claims at issue. (*Id.* ¶¶ 81, 87.) Betak is wrong.

(a) *The '941 patent does not claim Betak's alleged contributions.*

The Complaint incorrectly alleges that claims 1 and 11 "claim, for example, the 'connected' electric vehicle charging system and method that Betak first proposed . . . in May 2014 . . . [and] the use of an electricity meter at the charging station." (*Id.* ¶ 81.)² However, Claims 1 and 11 of the '941 patent do not recite Wi-Fi connected charging stations or revenue-grade electricity meters.

The '941 patent relates generally to EV charging stations and power grid management, and is directed to "systems and methods for local autonomous response to grid conditions by electric vehicle charging stations." (Ex. A³ to Compl. at 1:18-22.) In one embodiment, an autonomous system has three meters (110, 120, 130) that each measure the flow of electricity through various lines in the system, and a controller (140) that receives input from those meters to control a

² The Complaint (correctly) does not assert that claims 1 or 11 of the '941 patent are directed to user-selected preferences.

³ The patents at issue—the '941 patent and the '277 patent—were attached to the Complaint as Exhibits A and B, respectively. (Exs. A & B to Compl.) Accordingly, the Court should consider them when deciding this motion because they were attached to and referred to by the Complaint, are central to Betak's corrected inventorship claims, and cannot reasonably be the subject of disputed authenticity. *See Marder v. Lopez*, 450 F.3d 445, 448 (9th Cir. 2006) ("A court may consider evidence on which the complaint 'necessarily relies' if: (1) the complaint refers to the document; (2) the document is central to the plaintiff's claim; and (3) no party questions the authenticity of the copy attached to the 12(b)(6) motion."). Alternatively, the Court should take judicial notice of these exhibits and consider them when deciding this motion because they are U.S. patents, which constitute public records the authenticity of which cannot reasonably be disputed. *See Anderson v. Kimberly-Clark Corp.*, 570 F. App'x 927, 932 n.3 (Fed. Cir. 2014) ("It is also well-established that a court may take judicial notice of patents or patent applications."); *see also* Corporate Defendants' contemporaneously filed Request for Judicial Notice.

1 charging station (150). (*Id.* at 6:21-7:2, Fig. 1.) The specification explains that the system provides,
 2 among other things, load sharing benefits that allow charging stations to coordinate and optimize
 3 charging loads on an electrical circuit. (*Id.* at 5:10-44.) Claim 1 of the '941 patent is
 4 representative:⁴

5 1. A system for generating a local autonomous response to a
 6 condition of an electric grid by a plurality of electric vehicle charging
 stations, the system comprising:

7 a. a first electricity meter for reading current, frequency, or voltage
 8 from a first electricity supply line to one of the plurality of electric
 vehicle charging stations;

9 b. a second electricity meter for reading current, frequency, or
 voltage from a second electricity supply line to all of the plurality of
 electric vehicle charging stations;

10 c. a third electricity meter for reading current, frequency, or voltage
 from a third electricity line from one or more renewable generators;
 and

11 d. an electric vehicle charging controller operatively coupled to the
 12 first electricity meter, the second electricity meter, the third
 electricity meter and the plurality of electric vehicle charging stations
 13 and operable to obtain readings from the first electricity meter, the
 second electricity meter and the third electricity meter and to control
 14 at least one of the plurality of electric vehicle charging stations based
 on the obtained readings.

15 (*Id.* at 11:61-12:16.) As evidenced by the text of claim 1, Betak's alleged contributions to the '941
 16 patent—Wi-Fi connectivity and revenue-grade meters—are not claimed. Claim 1 by its own terms
 17 does not claim Wi-Fi connectivity or optimizing energy supply based on the price of electricity or
 18 utility incentives. (*See id.*) In fact, the words “Wi-Fi,” “connected,” and “incentive” make no
 19 appearance in *any* claim of the '941 patent, and nothing in that patent suggests that Wi-Fi is
 20 essential to operation of the system in claim 1 (or the method of claim 11).

21 Moreover, although claim 1 recites first, second, and third electricity meters, it does not
 22 recite or purport to use a “revenue-grade electric meter,” which the Complaint specifically alleges
 23 as Betak's contribution. (*See* Compl. ¶ 46.) Indeed, according to the specification, Elements 110,
 24 120, and 130 in Figure 1, which embody the first, second, and third electricity meters, respectively,
 25 need only be capable of reading electricity through lines connecting one of a charging station, the

26
 27 ⁴ Claim 11 of the '941 patent is directed to a method that, for the purpose of this motion, is
 28 materially similar to claim 1 (*see* Ex. A to Compl. at 13:4-26), such that the arguments herein
 raised as to claim 1 apply equally to claim 11.

entire site, or a generator. (Ex. A to Compl. at 6:21-37.) And there is no requirement that “revenue-grade” electricity meters are needed to perform the meter reading functions described in claim 1. Thus, claims 1 (and 11) of the ’941 patent do not contain Betak’s alleged contributions.

(b) *The ’277 patent does not claim Betak’s alleged contributions.*

The Complaint does not (and cannot) allege that claims 1 or 12 of the ’277 patent are directed to revenue-grade meters. Further, Claims 1 and 12 of the ’277 patent do not recite Wi-Fi connected charging stations or user-selected charging preferences. Paragraph 87 of the Complaint, however, alleges incorrectly that:

[c]laims 1 and 12 of the ’277 Patent purport to claim, for example, a ‘computerized system’ and ‘computer-implemented method’ for load modeling to enable an electrical grid to deliver power efficiently to ‘charging assets’ for use in charging electric vehicle, for use with the ‘connected’ electric vehicle charging system and method that Plaintiff Betak first proposed . . . in May 2014.

Betak further alleges that claims 1 and 12’s concepts of determining a “charging pattern for each of the plurality of charging assets” and controlling “charging of the plurality of charging assets in accordance with the determined charging patterns,” include “the ‘user preference’ approach for controlling the JuiceBox charging station that Plaintiff Betak proposed.” (*Id.*) But, here again, Betak is wrong as is apparent by reading the patent at issue.

The ’277 patent is directed to “systems and methods for electrical charging load modeling services to optimize power grid objectives.” (Ex. B to Compl. at 1:31-36.) In one embodiment, a computerized system includes a cloud-based server (109) that collects and analyzes data from various sources (100-108) and generates outputs to control a power charger (108) while advancing grid objectives (110). (*Id.* at 5:35-6:46, Fig. 1.) The specification explains that the objectives include maximizing revenue, protecting assets, balancing energy distribution, reducing green-house gas emissions, and delivering other related services. (*Id.* at 6:37-46.) In another embodiment, a server (230) advances grid objectives (110) via logical modules (231-237) that, among other things, determine the charging patterns of charging assets (*i.e.*, charging stations) and control them. *Id.* at 7:1-30. Claim 1 of the ’277 patent is representative:

1 1. A computerized system for electrical charging load modeling to
 2 optimize power grid objectives, the system comprising:
 3 a. a plurality of charging assets; and
 4 b. a cloud server comprising at least one processing unit, the cloud
 5 server comprising:
 6 i. a data aggregation module configured to collect and aggregate a
 7 plurality of information items;
 8 ii. an analytics module configured to identify at least one temporal
 9 model associated with the data collected and aggregated by the data
 10 aggregation module;
 11 iii. a charging module configured to determine a charging pattern for
 12 each of the plurality of charging assets, the charging pattern
 comprising information on time intervals when each of the plurality
 of charging assets is to be charged, including the beginning and
 ending times of the charging operation and information on a level of
 charging during each charging time interval;
 iv. a charger asset module configured to control charging of the
 plurality of charging assets in accordance with the determined
 charging patterns by issuing a control command to each of the
 plurality of charging assets; and
 v. a communication module for communicating the control command
 issued by the charger asset module to the respective charging asset
 via a data network.

13 (*Id.* at 11:24-51.)⁵ As evidenced by the text of claim 1, Betak’s alleged contributions to the ’277
 14 patent—Wi-Fi connectivity and user-selected charging preferences—are not claimed. Indeed, claim
 15 1 does not claim Wi-Fi connectivity or optimizing energy supply based on the price of electricity or
 16 energy provider incentives. (*See id.* (not reciting the words “Wi-Fi,” “connected,” or “incentives”
 17 at all).) Instead, the claimed system describes a server with modules for aggregating and analyzing
 18 data, a module for recognizing charging asset patterns, and a module for controlling charging
 19 stations accordingly. (*Id.*) Indeed, the ’277 patent specification explains that Wi-Fi is not essential
 20 to operation of the system described in claim 1 (or the method of claim 12). (*See id.* at 7:48-51 (“In
 21 various embodiments, the communication between the aforesaid networked assets takes place via a
 22 network 201, which may be implemented using any now known or later developed wireless *or*
 23 *wired* network interconnect.” (emphasis added)); *see also id.* at 5:52-56 (“The aforesaid power grid
 24 data 103 as well as any other data described herein may be received by the cloud-based server 109
 25
 26

27 ⁵ Claim 12 of the ’277 patent is directed to a method that, for the purpose of this motion, is
 28 materially similar to claim 1, *see* Ex. B to Compl. at 12:34-57, such that the arguments herein
 raised as to claim 1 apply equally to claim 12.

1 via a *wired* or wireless computer data network connection, which are well known to persons of
 2 ordinary skill in the art.” (emphasis added)).)

3 Moreover, although claim 1 of the ’277 patent describes the determination of a “charging
 4 pattern for each of the plurality of charging assets” based on timing and output levels, it does not
 5 recite or purport to require user-selected charging preferences—which the Complaint specifically
 6 describes as Betak’s contribution. (See Compl. ¶ 47.) The Complaint describes Betak’s “user
 7 preference” approach as requiring users “to enter their charging preference (e.g., minimizing
 8 charging cost versus minimizing charging time, the time of day that the user typically connects
 9 their vehicle to the JuiceBox system).” (*Id.*) Claim 1 of the ’277 patent, on the other hand, contains
 10 no such requirement for user input.

11 Additionally, the ’277 patent specification explains that the claimed “charging asset” is a
 12 charging station. (Ex. B to Compl. at 7:1-13 (“[C]harging module 233 opera[tes] to determine
 13 specific charging patterns for one or more charging assets, *such as EV charging stations*.”
 14 (emphasis added)).) Unlike Betak’s alleged “user preference” approach, which focuses on a given
 15 user’s charging preferences and behavior, claim 1 of the ’277 patent focuses on a charging station’s
 16 overall activity (*i.e.*, its charge time intervals and output level). (See *id.*) Given that, Betak’s
 17 allegation that the claimed pattern determination is “based on the user’s actual charging behavior”
 18 is incorrect. (See Compl. ¶ 87.) Neither a user’s preference nor her individual charging behavior is
 19 required for the system of claim 1 to perform its pattern determination function. Accordingly,
 20 claims 1 (and 12) of the ’277 patent do not contain Betak’s alleged contributions.

21 None of the disputed claims at issue recites Betak’s alleged contributions—as he chose to
 22 describe and allege them in his Complaint. Betak is claiming joint-inventorship of specific patent
 23 claims, but in doing so, he alleges to have contributed ideas that do not appear in those claims. The
 24 Complaint therefore fails to allege facts demonstrating that Betak contributed to the conception of
 25 at least one claim of the patents at issue. See *Eastman*, 2018 WL 5982440, at *6 (“The Court
 26 cannot reasonably infer that an alleged contribution that . . . is seemingly unrelated to the novel
 27 aspect of the invention provides a basis for a [corrected inventorship] claim.”); *Beco Dairy*, 2015
 28 WL 925588, at *5; *Sewall*, 21 F.3d at 415. Accordingly, the Court should dismiss Counts I and II.

2. Because Betak's Alleged Contributions Merely Explained the Current State of the Art, They Were Insignificant

Even if the disputed claims at issue recited Betak's alleged contributions, Betak's alleged contributions were not new or inventive when allegedly disclosed. Rather, they were insignificant given the then-current state of the art. *See Ethicon*, 135 F.3d at 1460 ("One who simply provides the inventor with well-known principles or explains the state of the art without ever having 'a firm and definite idea' of the claimed combination as a whole does not qualify as a joint inventor.").

Again, according to the Complaint, Betak made three specific contributions to the conception of the patents at issue: (1) having Wi-Fi-connected, software-based charging stations that optimize energy usage in response to costs and available incentives; (2) using revenue-grade electric meters to measure charging station usage; and (3) allowing user-selected charging preferences to control energy distribution. (Compl. ¶¶ 24, 45-47.) Betak allegedly communicated his Wi-Fi connectivity idea to Miftakhov on May 15, 2014. (*See id.* ¶ 24.)⁶ However, each of these alleged contributions was disclosed in prior art before May 2014. United States Patent Appl. Pub. Nos. 2013/0179061 to Gadh et al. ("Gadh") and 2009/0021213 to Johnson ("Johnson"), for example, predate Betak's alleged May 2014 disclosure of ideas to Miftakhov, and describe the same concepts that Betak alleges he contributed. (*See* Exs. A, B.⁷)

⁶ The Complaint does not specify when Betak disclosed his other ideas—*i.e.*, revenue-grade electricity meters and user-selected preferences—to Miftakhov and/or EMW. However, Betak alleges his purported efforts began after May 2014. (Compl. ¶ 24-26.)

⁷ Unless otherwise specified, "Ex." refers to exhibits attached to the Declaration of Christopher B. McKinley in support of this motion. *See* McKinley Decl. ¶¶ 2-3. Gadh and Johnson are references cited on the face of the patents at issue—Johnson on the '941 patent and Gadh on the '277 patent. (*See* Exs. A & B to Compl.) The Court should therefore treat Gadh and Johnson as part of the Complaint and consider them when deciding this motion because: (1) they are references cited on the face of the patents at issue, which were themselves attached to and referred to by the Complaint; (2) they are central to Betak's corrected inventorship claims because conception requires consideration of the state of the art; and (3) given that they are pre-grant publications of U.S. patent applications, they cannot reasonably be the subject of disputed authenticity. *See Marder*, 450 F.3d at 448. Alternatively, the Court should take judicial notice of Gadh and Johnson because they are pre-grant publications of U.S. patent applications, which constitute public records the authenticity of which cannot reasonably be disputed. *See Anderson*, 570 F. App'x at 932 n.3; *see also Coffelt v. NVIDIA Corp.*, Case No. CV 16-00457 SJO (KKx), 2016 WL 7507763, at *2 n.3 (C.D. Cal. June 21, 2016) (taking judicial notice of the prosecution history of the asserted patent which "includes the prior art cited during the examination of the patent" (citation omitted)), *aff'd*, 680 F. App'x 1010 (Fed. Cir. 2017); Corporate Defendants' Request for Judicial Notice.

1 **User Preferences.** Gadh (published in July 2013) teaches Betak’s alleged “user
 2 preferences” idea. Gadh is directed to “infrastructure modifications and additions to provide
 3 capabilities for charging many EVs over a power supply grid.” (Ex. A ¶ 7.) Notably, Gadh teaches
 4 Betak’s “user-preference” idea by disclosing a system that “allows for electric vehicle charging,
 5 *coupled with user preferences as to charge time, charge cost, and charging station capabilities*,
 6 without exceeding the power grid capacity.” (*Id.* at Abstract (emphasis added); *see also id.* ¶ 60
 7 (“Users may set charging requirements for their vehicles, e.g., maximum time, maximum prices,
 8 using a web or smart phone application.”), ¶ 62 (“User profile information may include the
 9 different vehicles the user operates, a charging profile for each vehicle, . . . as well as a confidence
 10 level associated with how accurately the user adheres to his charging profile.”), ¶ 100 (“Here, the
 11 central server 602 may control simultaneous charging of many vehicles, based on users’ profiles,
 12 selections of charge modes, allowable charging costs, and allowable time limits for charging.”).)

13 **Wi-Fi Connectivity.** Gadh also discloses Betak’s alleged idea of using Wi-Fi connected,
 14 software-based charging stations to optimize energy supply by considering utility demands and
 15 cost. (*Id.* ¶ 90 (“The previously described smart meters 116 . . . may communicate . . . through . . .
 16 WiFi tower 204. Various other methods are used in the overall communication architecture,
 17 including, but not limited to: WiFi.”), ¶ 65 (“For example, user charging profiles (e.g. time and
 18 price requirements) and *utility time-of-day charging restrictions and maximum load limits* are
 19 used to dynamically schedule charging for one to “n” number of EVs.” (emphasis added)).)

20 Likewise, Johnson (published in January 2009) is directed to improvements for EV
 21 charging stations and teaches Betak’s alleged idea of optimizing energy supply based on the price
 22 of electricity. (Ex. B ¶ 12.) For instance, Johnson’s system stores electricity in a storage bank
 23 during off-peak hours for later use when energy prices increase. (*Id.* ¶ 52 (“CPU arranges for the
 24 electrical charging of a storage bank 42, if any, during power company ‘off-peak’ hours as defined
 25 by the site management and the use of this stored electricity to provide customer charging
 26 electricity rather than from the higher priced grid if charge level indicator 44 shows the stored
 27 charge level is adequate.”).)

1 **Revenue-Grade Meter.** Furthermore, Gadh discloses Betak’s alleged idea of using a
 2 “revenue-grade” electric meter capable of monitoring a charger station and communicating related
 3 data. (*See* Ex. A ¶ 53 (“In some implementations, RFID and RF sensor technology may be
 4 associated with smart meters 116a (using an advanced metering infrastructure AMI for usage
 5 monitoring and control 116b) as well.”).) Although Gadh does not describe its smart meters as
 6 “revenue-grade,” they function in like manner to Betak’s purported “revenue-grade” meters.
 7 (*Compare* Compl. ¶ 46 (describing “a revenue-grade electric meter . . . which allows the JuiceBox
 8 system to accurately measure the energy usage of each charging station”), *with* Ex. A ¶ 239 (“The
 9 smart meter or equivalent sensors on the charger continuously monitors the power consumption
 10 and sends real time data back to control center through a uniquely designed communication
 11 gateway at a 15 minute-interval and this interval is dynamically modifiable via a specific unique
 12 architecture.”).)

13 As Gadh and Johnson make clear, even if Betak’s alleged contributions were claimed, such
 14 alleged contributions to the conception of the patents at issue merely explained the then-current
 15 state of art, rendering them insignificant. In this case, that is clear based on the prior art references
 16 cited on the face of the very patents that Betak claims to have co-invented. *Eastman*, 2018 WL
 17 5982440, at *5 (“[A] joint inventor must . . . ‘do more than merely explain to the real inventors
 18 well-known concepts and/or the current state of the art.’” (citation omitted)). Thus, the Court
 19 should dismiss Counts I and II for this independent reason as well.

20 **B. Betak’s Fraud by False Promise Claim Fails to Satisfy Rule 9(b)’s Heightened**
 21 **Pleading Standard and Should be Barred by the Economic Loss Rule**

22 A fraud by false promise or promissory fraud claim is a subspecies of fraud. *Valencia v.*
 23 *Sharp Elecs. Corp.*, No. C 11-06177 JW, 2012 WL 542711, at *2 (N.D. Cal. Feb. 21, 2012) (noting
 24 that the elements of a cause of action for fraud under California law are necessary to allege a “fraud
 25 by false promise” claim), *aff’d*, 561 F. App’x 591 (9th Cir. 2014). As such, false promise claims
 26 are subject to the heightened pleading standards of Rule 9(b). *Id.* Betak’s fraud by false promise
 27 claim against EMW (Count III) fails because (1) Betak fails to satisfy Rule 9(b)’s heightened
 28 pleading standard; and (2) the claim is barred by the economic loss rule.

1. Betak's Fraud by False Promise Claim Fails to Satisfy Rule 9(b)

Betak's fraud by false promise claim fails to satisfy Rule 9(b)'s heightened pleading standard because it impermissibly lumps Miftakhov and EMW together, without specifying with particularity the role of EMW in the alleged fraud.⁸ For that reason alone, Betak's fraud by false promise claim against EMW should be dismissed. *See, e.g., Kennedy v. World Sav. Bank, FSB*, Case No. 14-cv-05516-JSC, 2015 WL 1814634, at *8 (N.D. Cal. Apr. 21, 2015) (dismissing fraud claim against multiple defendants because the plaintiff "fail[ed] to include what specific misrepresentations he imputes to each Defendant; instead, he improperly lumps all Defendants together and fails to assert that any one Defendant made any particular misrepresentation or false statements"); *Cheery Way (USA), Inc. v. Ngoc Diep Duong*, No. C12-0486 JSC, 2012 WL 1670172, at *6 (N.D. Cal. May 14, 2012) (dismissing fraud claim that lacked specific allegations against moving defendants because "[a] complaint 'shot through with general allegations that the 'defendants' engaged in fraudulent conduct' does not comply with Rule 9(b)" (citation omitted)).

The Ninth Circuit's decision in *Swartz v. KPMG LLP*, 476 F.3d 756 (9th Cir. 2007), affirming the dismissal of a fraud claim asserted against a group of defendants, is controlling. In that case, a plaintiff alleged that multiple defendants "lured" plaintiff into purchasing a tax-reduction product, despite knowing that it would be considered unlawful by the IRS. *Id.* at 758-59. The Ninth Circuit affirmed the dismissal of the plaintiff's fraud claim for failure to plead with particularity because the complaint accused two defendants of fraud and, in conclusory fashion, attempted to attribute the conduct of one defendant to another without a basis for doing so:

The complaint is shot through with general allegations that the "defendants" engaged in fraudulent conduct but attributes specific misconduct only to [certain defendants]. Conclusory allegations that [the other defendants] . . . "were acting as agents [of the properly pled defendants]" and were "active participants in the conspiracy" without any stated factual basis are insufficient as a matter of law.

⁸ In his Complaint, Betak alleges that Enel X "knew of the fraudulent scheme" and helped to "perpetuat[e] . . . the fraudulent scheme." (Compl. ¶ 98.) However, Betak has not alleged fraud by false promise against Enel X. (*See* Compl. at Count III (alleging promissory fraud claim against Miftakhov and EMW only).) Because Betak is not alleging a fraud by false promise claim against Enel X, the allegations in Paragraph 98 of the Complaint should not be considered. But even if it was, a claim against Enel X would fail for the same reasons.

1 *Id.* at 765.

2 Similarly here, the Complaint merely alleges that “Defendants Miftakhov and EMW
3 engaged in a fraudulent scheme,” but fails to allege what misrepresentations EMW made. (*See*
4 Compl. ¶¶ 92-93.) The Complaint generally states that in making the alleged misrepresentations,
5 Miftakhov acted “as the CEO of Defendant EMW,” but provides no supporting allegations. (*Id.*)
6 The Complaint does not attribute *any statements or representations* to EMW at all, other than
7 plaintiff’s conclusory allegations that the statements were made on behalf of EMW by Miftakhov.
8 The Complaint’s allegations that statements by Miftakhov should be attributed to EMW—because
9 Miftakhov was the CEO—are not enough. In a fraud action against corporate defendants, the
10 plaintiff must allege specifics and the “authority to speak.” *Flowers v. Wells Fargo Bank, N.A.*, No.
11 C 11-1315 PJH, 2011 WL 2748650, at *6 (N.D. Cal. July 13, 2011) (citing *Tarmann v. State Farm*
12 *Mut. Auto. Ins. Co.*, 2 Cal. App. 4th 153, 157 (1991)). Further, noting that an individual speaker
13 was an officer of a corporate entity at the time of an alleged statement is not enough. *See Senah,*
14 *Inc. v. Xi’an Forstar S&T Co.*, Case No. 13-cv-04254-BLF, 2014 WL 6065895, at *1, *3 (N.D.
15 Cal. Nov. 12, 2014) (dismissing fraud claim where plaintiff failed to allege that a “Manager,
16 International Department” had the “authority to speak on behalf of the Defendant, as required when
17 pleading the misrepresentation of a corporate defendant”).

18 Even if Betak were outside of Rule 9(b)’s heightened pleading standard—he is not—he
19 actually alleges that Miftakhov made the alleged misrepresentations explicitly *outside* of his role as
20 an officer of EMW: “Defendant Miftakhov proposed to Plaintiff Betak that their collaboration
21 would be under the auspices of a new company called [EV Juice] rather than through EMW.
22 Defendant Miftakhov explained that EMW was burdened by what Miftakhov described as
23 ‘baggage’ related to its other founders and shareholders.” (Compl. ¶ 31.) As a matter of law, this
24 Court may ignore a generalized allegation (e.g., that Miftakhov was acting as EMW’s CEO when
25 making statements to Betak) that is directly contradicted by a more specific one (e.g., that
26 Miftakhov made a specific statement indicating he was not acting on EMW’s behalf). *See Garrison*
27 *v. Oracle Corp.*, 159 F. Supp. 3d 1044, 1076 (N.D. Cal. 2016) (dismissing plaintiffs’ fraudulent
28 concealment claim where “Plaintiffs’ specific factual allegations contradict Plaintiffs’ general

allegations”). Having specifically admitted that Miftakhov made alleged representations outside of his role as CEO of EMW, Betak cannot then generally allege in the same pleading that EMW is somehow responsible for those same representations. *See id.*

Accordingly, because Betak improperly lumps Miftakhov and EMW together, fails to include particularized allegations as to EMW, and even disclaims EMW’s role in the alleged misrepresentations elsewhere in his Complaint, Betak’s fraud by false promise claim should be dismissed as against EMW.

2. The Economic Loss Rule Should Bar Betak’s Fraud by False Promise Claim

Betak’s fraud by false promise claim also should be barred by the economic loss rule. Under California law, the economic loss rule precludes recovery for “purely economic loss due to disappointed expectations,” unless a plaintiff “can demonstrate harm above and beyond a broken contractual promise.” *Multifamily Captive Grp., LLC v. Assurance Risk Managers, Inc.*, 629 F. Supp. 2d 1135, 1145 (E.D. Cal. 2009) (citation omitted). Courts apply the economic loss rule to bar fraud claims where “the damages plaintiffs seek are the same economic losses arising from the alleged breach of contract.” *Id.* at 1146. Further, courts have applied the economic loss rule to bar promissory fraud claims. *UMG Recordings, Inc. v. Glob. Eagle Entm’t, Inc.*, 117 F. Supp. 3d 1092, 1103-06 (C.D. Cal. 2015) (dismissing a fraud by false promise claim as barred by the economic loss rule because it was based on pure economic losses and a breach of contract claim).

The economic loss rule applies where the “allegations supporting [the plaintiff’s underlying tort] claims are wholly repetitious of [his] breach of contract [or] alternative quasi-contract claims, [he] only claim[s] harm ‘in the amount of the payment’ . . . [and plaintiff] allegedly suffered ‘purely economic loss due to disappointed expectations’ without alleging any ‘harm above and beyond a broken contractual promise.’” *Potter v. Chevron Prods. Co.*, Case No. 17-cv-06689-PJH, 2018 WL 4053448, at *8 (N.D. Cal. Aug. 24, 2018) (citation omitted).

The court’s ruling in *Oracle USA, Inc. v. XL Global Services, Inc.*, No. C 09-00537 MHP, 2009 WL 2084154 (N.D. Cal. July 13, 2009), is instructive. In *Oracle*, the plaintiff sued the defendant for promissory fraud for failure to pay for software and consulting services, alleging that the defendant never intended to pay, and that the defendant’s false promise induced plaintiff to

1 provide free services. *Id.* at *2. The court dismissed the claim because it found the allegations were
2 straightforward breach of contract claims that were solely economic in nature:

3 No physical harm or exposure to liability for personal damages has
4 resulted from [defendant]’s withholding of payment. The
5 allegations of the complaint describe a straightforward breach of a
6 series of agreements to make payment for services provided.
7 Virtually any time a contract has been breached, the party bringing
8 suit can allege that the breaching party never intended to meet its
9 obligations. Businesses should not have to worry that simple
10 disputes about bills and contract performance will routinely lead to
11 the threat of punitive damages.

12 *Id.* at *7.

13 Similarly, in *Multifamily*, the plaintiffs brought breach of contract and fraud claims based
14 on an alleged oral contract whereby plaintiffs would serve as the exclusive broker for the creation,
15 sale, and marketing of the defendant’s insurance programs. 629 F. Supp. 2d at 1139. The court
16 explained that the misrepresentations undergirding the plaintiffs’ claims were those made in
17 connection with the defendant’s “initial promise associated with the alleged oral contract.” *Id.* at
18 1146. As a result, the court held the damages sought by the plaintiffs were the same economic
19 losses arising from the alleged breach of contract, and were therefore barred by the economic loss
20 rule. *Id.*

21 Here too, Betak asserts a fraud by false promise claim based purely on the initial promise
22 associated with the alleged quasi-contract: failure to pay for services rendered. Betak’s harm is
23 purely economic in nature—Betak’s requested relief is the value of the services rendered. He has
24 failed to allege any physical harm or exposure to liability for personal damages. And while other
25 courts have held that the “economic loss doctrine will not bar Plaintiffs’ fraud-based claims if
26 Plaintiffs’ promissory fraud claim is adequately pled,” *see Arena Rest. & Lounge LLC v. S.*
27 *Glazer’s Wine & Spirits, LLC*, Case No. 17-CV-03805-LHK, 2018 WL 1805516, at *7 (N.D. Cal.
28 Apr. 16, 2018), the Corporate Defendants respectfully submit that the analysis set forth in *Oracle*
and *Multifamily* should be adopted by this Court. *See Oracle*, 2009 WL 2084154, at *7
 (“Businesses should not have to worry that simple disputes about bills and contract performance
will routinely lead to the threat of punitive damages.”). Accordingly, the economic loss rule should
bar Betak’s fraud by false promise claim.

C. **Betak's Quasi-Contract and Quantum Meruit Claims Fail Because They Are Time-Barred and the Complaint Fails to Plead Facts Specific to EMW**

As an initial matter, claims under quasi-contract and quantum meruit (Counts IV and V) are the same claim, such that one count should be dismissed for being duplicative. *See McBride v. Boughton*, 123 Cal. App. 4th 379, 388 n.6 (2004) (noting that quasi-contract is often called quantum meruit); *see also United States ex rel. Bergelectric Corp. v. Sauer, Inc.*, Case No. 5:18-cv-00612-EJD, 2019 WL 1746061, at *7 (N.D. Cal. Apr. 18, 2019) (same).

The remaining claim should be dismissed because it is barred by the two year statute of limitations for quasi-contract claims. Cal. Civ. Proc. Code § 339. “[T]he limitations period begins to run from the time the last service is rendered by the plaintiff to the defendant.” *Royal Primo Corp. v. Whitewater W. Indus., Ltd*, Case No. 15-cv-04391-JCS, 2016 WL 4080177, at *12 (N.D. Cal. July 29, 2016) (alteration in original) (citation omitted).

Here, the Complaint was filed in May 2019, yet Betak does not allege that he provided any services relevant to his claims on or after May 2017—the statutory cutoff. Instead, Betak alleges that since June 2015, he worked on the JuiceBox/JuiceNet project on a part-time basis. (Compl. ¶ 67.) He admits that he stopped receiving EMW emails in July 2016. (Compl. ¶ 68.) The most recent date indicating Betak’s alleged involvement in EMW is November 2016, when Betak was purportedly listed as a member of its management team. (*Id.*) Because the conduct alleged here occurred more than two years prior to the Complaint being filed, the quasi-contract claim should be barred by the statute of limitations. *See Royal Primo*, 2016 WL 4080177, at *12 (dismissing quasi-contract claim where the plaintiffs “allege[d] that they performed services for [defendant] until 2009, more than two years prior to the filing of [the] action”).⁹

⁹ Unlike Betak’s claim for fraud by false promise, Betak’s quasi-contract and quantum meruit claims are not grounded in fraud or mistake. *Compare* Cal. Civ. Proc. Code § 338(d). With respect to his quasi-contract claim, Betak alleges that a contract was formed by an offer from Miftakhov that he accepted: “Betak and [Miftakhov] and EMW, by their conduct and based on their relationship, entered into a contract that may be implied in law. [Miftakhov] offered that if [Betak] contributed his intellectual energy, technical expertise, and business contacts to the effort to build the JuiceBox/JuiceNet product, Betak would share in the proceeds from the commercialized product, including in any sale of the business. [Betak] accepted and did contribute his efforts and energies, and Betak’s contributions helped produce a viable commercial product.” (Compl. ¶ 102.) Accordingly, Betak’s quasi-contract and quantum meruit claims are an action brought “upon a
(cont’d)

1 Regardless, even if Betak’s quasi-contract claim were timely (it is not), it fails to state a
 2 plausible claim as against EMW. To state a claim for quasi-contract or quantum meruit under
 3 California law, the plaintiff must allege “(1) that the plaintiff performed the services for the
 4 defendant; (2) *that they were rendered at defendant’s request*; and (3) that they are unpaid.”
 5 *Summit Estate, Inc. v. Cigna Healthcare of Cal., Inc.*, Case No. 17-CV-03871-LHK, 2017 WL
 6 4517111, at *11 (N.D. Cal. Oct. 10, 2017) (emphasis added) (citation omitted).

7 As alleged by Betak, Miftakhov alone requested Betak perform services, not EMW. The
 8 Complaint acknowledges that Miftakhov presented the offer of employment to Betak (Compl.
 9 ¶ 32), but in an attempt to hold EMW liable, the Complaint merely concludes that Miftakhov “was
 10 the CEO of EMW” when the promise was made. (*Id.* ¶ 105.) Such allegations are insufficient to
 11 confer liability for Miftakhov’s conduct onto EMW. Indeed, and as explained above, Betak alleges
 12 exactly the opposite, that Miftakhov’s misrepresentations were specifically made outside of his role
 13 as EMW’s CEO. (*Id.* ¶ 31.) Because EMW did not request Betak perform services for it, Betak has
 14 failed to allege a plausible quasi-contract claim against EMW. *See Summit Estate*, 2017 WL
 15 4517111, at *11 (dismissing quantum meruit claim where “Plaintiffs have not alleged enough facts
 16 to plausibly suggest that Defendants *requested* Plaintiff to render . . . services”).

17 **D. The Complaint Fails to Plead Facts Supporting Betak’s Claim Under**
 18 **California’s Unfair Competition Law (“UCL”)**

19 The UCL allows a claim for “any [1] unlawful, [2] unfair or [3] fraudulent business act or
 20 practice.” Cal. Bus. & Prof. Code § 17200. Betak has failed to plead a plausible claim (Count VI)
 21 under any of these three prongs.

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27 contract, obligation or liability not founded upon an instrument of writing,” Cal. Civ. Proc. Code
 28 § 339, and therefore are subject to the two-year statute of limitations. Even if Betak tries to argue
 otherwise—which he cannot—his quasi-contractual claims fail here for the same reason his fraud
 by false promise claim does—failure to plead under the heightened pleading standard of Rule 9(b).

1 1. The UCL Claim Under the Unlawful Prong Is Preempted or Derivative of
 2 Common Law Claims That Cannot Satisfy the Unlawful Prong

3 Betak's UCL claim under the unlawful prong should be dismissed because it (1) relies on
 4 the inventorship claim; or (2) relies on common law claims that cannot satisfy the unlawful prong.

5 "[T]he field of federal patent law preempts any state law that purports to define rights based
 6 on inventorship." *James v. J2 Cloud Servs. Inc.*, Case No. 2:16-cv-05769-CAS(PJWx), 2018 WL
 7 6092461, at *4 (C.D. Cal. Nov. 19, 2018) (alteration in original) (citation omitted). Thus, to the
 8 extent Betak's unlawful UCL claim relies on "Defendants Miftakhov and EMW's failure to
 9 identify Plaintiff Betak as an inventor in filing and prosecuting various patent applications"
 10 (Compl. ¶ 109.a), it is preempted by federal patent law. *See James*, 2018 WL 6092461, at *6
 11 (preempting California unfair competition claim "because it is entirely based on plaintiff's
 12 assertion of sole inventorship of the [patent at issue]").

13 Additionally, "[w]here a plaintiff cannot state a claim under [another] law, he or she cannot
 14 state a UCL claim [under the unlawful prong] either." *Suarez v. Bank of Am. Corp.*, Case No. 18-
 15 cv-01202-MEJ, 2018 WL 2431473, at *31 (N.D. Cal. May 30, 2018). Alleging a common law
 16 violation is insufficient. *See Stearns v. Select Comfort Retail Corp.*, 763 F. Supp. 2d 1128, 1150
 17 (N.D. Cal. 2010) (noting that "common-law claims cannot form the basis for a UCL claim").
 18 Because Betak's remaining California common law claims cannot support his UCL claim under the
 19 unlawful prong, the UCL claim should be dismissed as to this prong.

20 2. The Complaint Fails to Plead Facts Supporting a UCL Claim Under the
 21 Unfair Prong

22 The California Supreme Court has defined "unfair" conduct as "conduct that threatens an
 23 incipient violation of an antitrust law, or violates the policy or spirit of one of those laws because
 24 its effects are comparable to or the same as a violation of the law, or otherwise significantly
 25 threatens or harms competition." *Cel-Tech Commc'ns, Inc. v. L.A. Cellular Tel. Co.*, 20 Cal. 4th
 26 163, 187 (1999).¹⁰ Betak has "not alleged an antitrust injury, i.e. harm to competition, which is

27 ¹⁰ "Before *Cel-Tech*, courts held that 'unfair' conduct occurs when that practice 'offends an
 28 established public policy or when the practice is immoral, unethical, oppressive, unscrupulous or
 (cont'd)"

distinct from harm to a competitor. On this basis alone, the ‘unfair’ competition claim is subject to dismissal.” *UCAR Tech. (USA) Inc. v. Yan Li*, Case No. 5:17-cv-01704-EJD, 2018 WL 2555429, at *7 (N.D. Cal. June 4, 2018); *see Creative Mobile Techs., LLC v. Flywheel Software, Inc.*, Case No. 16-cv-02560-SI, 2017 WL 679496, at *6 (N.D. Cal. Feb. 21, 2017) (granting motion to dismiss UCL claim under the unfair prong because “the Court finds that Flywheel has failed to allege an incipient violation of antitrust law or conduct that violates ‘the policy or spirit of one of those laws because its effects are comparable to or the same as a violation of the law’” (citation omitted)); *see also Levitt v. Yelp! Inc.*, 765 F.3d 1123, 1137 (9th Cir. 2014) (finding that “very general allegation[s]” did not suffice to allege what “amounts to a violation of antitrust laws” or conduct that “otherwise significantly threatens or harms competition” (citation omitted)).

3. The Complaint Fails to Plead Facts Supporting a UCL Claim Under the Fraudulent Prong Sufficient to Meet the Heightened Rule 9(b) Standard

Betak’s UCL claim under the fraud prong fails because Betak has not adequately pleaded that the Corporate Defendants engaged in fraudulent conduct. *See Minkler v. Apple, Inc.*, 65 F. Supp. 3d 810, 821 (N.D. Cal. 2014) (“Because Plaintiff has not pled with particularity the circumstances surrounding Apple’s fraudulent behavior, she has failed to meet the 9(b) pleading standards for her claims sounding in fraud and the Court will dismiss the . . . UCL counts against Apple.”). In order to plead a fraud-based UCL claim, Betak must specify the “‘who, what, when, where, and how’ of the misconduct alleged and detail the ‘time, place, and specific content of the false representations.’” *Id.* (citation omitted); *see* Sec. II., *supra* (describing the heightened pleadings standard). A fraud claim against multiple defendants should be dismissed when the

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substantially injurious to consumers.” *Hodsdon v. Mars, Inc.*, 891 F.3d 857, 866 (9th Cir. 2018) (citation omitted). Betak is not a consumer. Therefore, the unfair prong claim analysis is done under *Cel-Tech*’s “different, more concrete, definition of unfair,” that applies to claims brought by competitors. *Id.* Regardless, even under the “consumer standard,” Betak’s claim fails because he failed to allege that the Corporate Defendants violated any public policy, or that their actions were “immoral, unethical, oppressive, or unscrupulous.” *Elias v. Hewlett-Packard Co.*, 903 F. Supp. 2d 843, 858 (N.D. Cal. 2012) (dismissing UCL claim because “[a]lthough [plaintiff] makes conclusory statements that [defendant]’s alleged conduct is unfair, he does not reference any established public policy that [defendant]’s actions have violated or claim that the conduct is immoral, unethical, oppressive, or unscrupulous”).

1 plaintiff “fail[ed] to include what specific misrepresentations he imputes to each Defendant; [and]
 2 instead . . . improperly lumps all Defendants together and fails to assert that any one Defendant
 3 made any particular misrepresentation or false statements”). *Kennedy*, 2015 WL 1814634, at *8.
 4 As previously discussed, Betak’s UCL claim under the fraudulent prong fails here because Betak
 5 improperly lumps all of the defendants together and fails to include particularized allegations (or
 6 any allegations for that matter) as to the Corporate Defendants.

7 **E. Betak’s Constructive Trust Claim Is an Equitable Remedy, Not a Claim**

8 Under California law, a constructive trust is an equitable remedy, not a cause of action. *See*
 9 *Mattel, Inc. v. MGA Entm’t, Inc.*, 616 F.3d 904, 908-09 (9th Cir. 2010); *Kim v. Westmoore*
 10 *Partners, Inc.*, 201 Cal. App. 4th 267, 277 n.4 (2011) (holding that a constructive trust is a
 11 “remed[y], not [a] cause[] of action”). Betak’s constructive trust claim should therefore be
 12 dismissed because it is not a claim. *See Kim*, 201 Cal. App. 4th at 277 n.4 (refusing to consider a
 13 constructive trust a “cause[] of action” on default judgment because constructive trust is an
 14 equitable remedy, not a cause of action).

15 **F. The Complaint Fails to Plead Facts Supporting an Accounting Claim**

16 “A cause of action seeking an accounting may be maintained when (1) a relationship exists
 17 between a plaintiff and defendant that requires an accounting, and (2) some balance is due to the
 18 plaintiff that can only be ascertained by an accounting.” *Shkolnikov v. JPMorgan Chase Bank*, No.
 19 12-03996 JCS, 2012 WL 6553988, at *23 (N.D. Cal. Dec. 14, 2012). The Complaint does not
 20 allege any fiduciary relationship between the parties, so Betak’s accounting claim must rest on
 21 pleading that “some balance is due . . . that can only be ascertained by an accounting.” *Id.* But the
 22 Complaint fails to do so. Instead, the Complaint merely recites, in a conclusory fashion, that the
 23 “value of the transferred assets and property are unknown [and] cannot be ascertained without an
 24 accounting.” (Compl. ¶ 117.) This assertion, however, belies the specific facts alleged in the
 25 Complaint, which include Betak’s alleged equity in EMW, and the alleged purchase price for
 26 EMW. Therefore, Betak’s accounting claim should be dismissed because the Complaint fails to
 27 state (nor could it reasonably) that the complexity of the Corporate Defendants’ accounts requires
 28 an accounting. *See Shkolnikov*, 2012 WL 6553988, at *23 (“[A]n action for accounting is not

1 available where the plaintiff alleges the right to recover a sum certain or a sum that can be made
 2 certain by calculation.” (citation omitted)); *see also Ginocchi v. Grand Home Holdings, Inc.*, Civil
 3 No. 10cv2115-L(BGS), 2011 WL 3474936, at *2-3 (S.D. Cal. Aug. 9, 2011) (dismissing claim for
 4 accounting to determine payment because calculations could be made based on contract).

5 Additionally, the accounting claim should be dismissed because it is a derivative claim that
 6 relies on poorly pled claims. Since all other claims against the Corporate Defendants should be
 7 dismissed, the accounting claim should be dismissed as well. *Janis v. Cal. State Lottery Comm’n*,
 8 68 Cal. App. 4th 824, 833-34 (1998) (dismissing accounting claim where it was the sole remaining
 9 claim because “[a] right to an accounting is derivative; it must be based on other claims”).

10 **V. CONCLUSION**

11 For the foregoing reasons, the Corporate Defendants respectfully request that the Court
 12 enter an Order dismissing: (1) Counts I, II, and VI-VIII against the Corporate Defendants; and (2)
 13 Counts III-V against EMW.

14 Date: July 3, 2019

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